IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.825 OF 2004
(Against the Order of Acquittal)

The State of Maharashtra ...Appellant

Vs.

Madhav Valimba Jagtap ...Respondent

Mr.S.R.Shinde, A.P.P. for the Appellant

Mr.W.N.Yande, Advocate for the Respondent

CORAM: V.M.KANADE,J.
DATED: 15TH OCTOBER, 2004

P.C.

1. Heard learned A.P.P. for the State and learned Counsel appearing on behalf of the Respondent. The state has preferred this appeal against the Judgment and Order passed by the Special Judge, Thane in Special Case No.15 of 1994. The trial Court by the said Judgment and Order dated 25th February, 2004 acquitted the accused of the offence with which he has been charged under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. The prosecution case was that the complainant Kutubuddin had purchased a hut from one Mumtaz Ahmed in 1990. However, though he had purchased the said hut he found that it was occupied by some third

party. The complainant, therefore, got the hut vacated by taking the help of one Karimunissa. Said Karimunissa had demanded Rs.2000/- from him. He therefore, filed a complaint against Karimunissa in Shantinagar Police Station on 21st January, 1992. He thereafter went to the accused/respondent, who was attached to Shanti Nagar Police Station as a Police Sub Inspector. Complainant met accused/respondent in connection with the application. The accused informed him that one complaint has been filed by Mumtaz against him and he demanded an amount of Rs.5,500/- which was to be paid to Mumtaz and Rs.1,500/- to the accused. The complainant lodged a complaint with the Anti-Corruption Bureau, Thane and accordingly a Raiding Party went to the Shantinagar Police Station. The entire procedure of pre-trap panchanama was completed. According to the complainant the accused demanded an amount of Rs.1000/- instead of Rs.500/- as demanded earlier and therefore, he went back and met P.I. Kale, who gave him an additional amount of Rs.500/- along with the amount which was already given to him. The complainant went to the Police Station. He was told to deposit the amount in the drawer. Amount was deposited. There after the accused came out of the said room, the complainant gave a signal to the raiding party and thereafter the accused was apprehended, the money was seized from the drawer.

3. The trial Court after perusing the evidence adduced by the Prosecution came to the conclusion that the Prosecution has not proved the demand of money and has also not proved the acceptance of bribe of Rs.1000/- from the complainant. Trial Court also came to the conclusion that prosecution has not proved that the accused obtained pecuniary advantage by abusing his position as Public Servant. Trial Court further held that the order of sanction which was granted by the appointing authority was passed without application of mind. The trial Court therefore, acquitted the accused.

4. The Record and Proceedings were called and have been received by this Court. I have perused the deposition of the complainant and the other witnesses. From the evidence of the complainant Kutubuddin it is clear that the complaint which was filed by him, against Karimunissa was duly attended by the Police and a statement was recorded and thereafter the statement of Karimunissa was also recorded and the matter was accordingly settled. Therefore, nothing further remained to be done in the said matter. Apart from that, there was no evidence to suggest that the complaint was filed by one Mumtaz against the complainant. Therefore, there is no question of demanding any amount from the complainant by the accused. Further more, from his evidence it is clear that the amount was deposited in the drawer

and that when the raiding party came there, admittedly accused was not in the room. Thus the crucial aspect of accepting the bribe has not been proved by the prosecution. Admittedly no Anthracin powder was found on the hands of the accused.

5. From the evidence of the complainant and the other panch witnesses the demand of bribe also in my view is not proved.

6. The trial Court has further observed that the Sanctioning Authority ought to have applied his mind independently while granting sanction to prosecute the accused. The Sanctioning Authority has admitted that certain words in the order of sanction were used inadvertently. Trial Court therefore, has come to the conclusion that it is a clear case of nonapplication of mind.

7. In my view the finding given by the trial Court is reasonable and is based on the evidence on record. I do not see any reason to interfere in the said order passed by the trial Court. The Leave is therefore, refused. Appeal is dismissed.

. C.C.expedited.

JUDGE